

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 2, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1177

Cir. Ct. No. 2003FA36

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE ATTORNEY FEES IN RE THE MARRIAGE OF:
BARBARA L. HOLLAY V. TRACY STEWART:**

TRACY STEWART,

APPELLANT,

V.

WILLIAM H. RUDOLPH,

RESPONDENT.

APPEAL from an order of the circuit court for Richland County:
MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.¹ Tracy Stewart appeals an order of the circuit court finding Stewart in contempt. In his brief on appeal, Stewart's argument as to why we should reverse relates to Stewart's contention that the circuit court should have granted his motion to reopen an April 2007 judgment that was the basis of the contempt finding. Because I reject that argument, and I discern no other developed argument, I affirm the circuit court.²

Background

¶2 Stewart retained Attorney Rudolph to represent him in a divorce and child custody action. At some point during the litigation, Stewart elected to proceed pro se. Accordingly, on March 22, 2007, Attorney Rudolph submitted a motion to withdraw from the case and for judgment for his fees, which the circuit court granted on April 9, 2007. Stewart acknowledges having received this motion and judgment.

¶3 On March 2, 2012, the circuit court addressed a motion to hold Stewart in contempt. The request for a contempt finding was based on allegations that Stewart failed to comply with requirements relating to a post-judgment supplemental order requiring Stewart to pay fees to Attorney Rudolph. At that hearing, Stewart argued that the circuit court should reopen the judgment that was entered in April 2007 that approved Attorney Rudolph's fees. At the hearing, the court granted the motion to hold Stewart in contempt. The court rejected

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The underlying judgment, which Stewart seeks to reopen, was decided by Richland County Circuit Court Judge Edward E. Leineweber. The order from which Stewart appeals was decided by Vernon County Circuit Court Judge Michael J. Rosborough.

Stewart's request to reopen, finding that Stewart had an opportunity to appeal the judgment after it was issued. The court also found that Stewart could not, more than four years after the judgment was entered, move to reopen.

Discussion

¶4 Stewart's challenge to the contempt order is based on his belief that the circuit court erred by not revisiting the order underlying the contempt finding. Whether he is aware of it or not, Stewart's request to reopen is governed by WIS. STAT. § 806.07. That statute provides for relief from a judgment for a number of reasons, including mistake, excusable neglect, or newly discovered evidence. WIS. STAT. § 806.07(1)(a)-(h). Stewart makes no argument regarding the application of this statute. More importantly, he makes no argument which would be a valid reason for reopening under this statute.

¶5 Rather, Stewart's argument appears to be that the April 2007 judgment was not a final order and that his time to appeal it has not yet expired. Stewart argues that, because the April 2007 judgment allowing Attorney Rudolph to withdraw and requiring Stewart to pay attorney fees did not state that it was a final and appealable order, and the judgment did not dispose of his entire post-divorce and child custody action, that judgment was not a final order under WIS. STAT. § 808.03(1) and *Wambolt v. West Bend Mutual Insurance Co.*, 2007 WI 35, ¶3, 299 Wis. 2d 723, 728 N.W.2d 670. Stewart argues that, because the order was not final, and the post-divorce and child custody litigation was ongoing subsequent to the April 2007 judgment, he should still have the opportunity to appeal the April 2007 judgment.

¶6 This argument is without merit. The April 2007 judgment was a final order from which Stewart had a right to timely appeal. The time to appeal

this judgment has long since expired. The judgment fully disposed of the matter between Stewart and Attorney Rudolph regarding Rudolph's withdrawal and payment of his attorney fees. Moreover, the absence of a finality statement does not make the order nonfinal. *See Admiral Ins. Co. v. Paper Converting Machine Co.*, 2012 WI 30, ¶29, 339 Wis. 2d 291, 811 N.W.2d 351 ("The absence of a finality statement cannot be used to create ambiguity when it is unambiguous that the order or judgment disposed of the entire matter in litigation as to one or more of the parties.").

¶7 Accordingly, to the extent Stewart is arguing that he should still be able to appeal the April 2007 judgment, his argument fails and his time to appeal that judgment has expired. To the extent Stewart is arguing that the circuit court erred when it denied his motion to reopen, he presents no reason that would satisfy the test for reopening. Thus, I affirm the circuit court's decision.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

